IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CRIMINAL APPELLATE JURISDICTION

CRIMINAL WRIT PETITION NO. 2155 OF 2005

Baitul Karam Co-Operative Housing Society Ltd. & Ors ...Petitioners

Versus

Ashraf Ali Ghulam Ali Karmali & Anr ...Respondents

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Ms. Hansa Adnani i/b Sagheer K. Khan, Advocate for Petitioners

Mr. Rajesh More, A.P.P. for State.

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CORAM: SMT. V.K. TAHILRAMANI, J.

DATED: 23RD SEPTEMBER, 2005

P. C.:-

1. Heard the learned advocate for the petitioners i.e. original accused and the learned A.P.P. for the State. The learned advocate for the petitioners states that they have served the respondent i.e. original complainant, however, none appears for the respondent i.e. original complainant.

2. The petitioners are facing prosecution under Sections 499 and 500 of I.P.C. in C.C. No. 1227/S/2002. In the said case, process has been issued against the petitioners by the learned Metropolitan Magistrate, 12th Court, Bandra, Mumbai.

3. The petitioners had preferred an application for recall of process before the learned Magistrate in the present case. The said application came to be rejected by order dated 19.4.2004. Being aggrieved by the said order, revision came to be preferred challenging the order of the Magistrate rejecting the application for recall of process. The learned Sessions Judge dismissed the said revision. In view of the decision of the Supreme Court in the case of **Adalat Prasad Vs. Rooplal Jindal (2004) 7 SCC 338,** it is clear that the Magistrate has no power to recall the process, hence, no fault can be found with the order of the learned Magistrate in rejecting the application for recall of process. Hence, I am not inclined to interfere with the said order. As the learned Magistrate could not have recalled the process, I am also not inclined to interfere with the order of the learned Sessions Judge dismissing the revision.

4. However, in view of the decision of this Court in the case of **V.K. Jain & Ors. Vs. Pratap V. Padode and Anr, reported in 2005(3) Mh.L.J. 778,** it is clear that revision is maintainable against the order of the Magistrate issuing process.

5. Hence, in view of the decision of this Court in the case of V.K. Jain (supra) in my opinion, the

petitioners has an efficacious remedy of preferring revision against the order of Magistrate issuing process. Hence, in my view, it would be appropriate that the petitioners prefers revision before the concerned Sessions Court against the order of the Magistrate issuing process.

6. Liberty is granted to the petitioners to prefer revision before the concerned Sessions Court. The learned advocate for the petitioners states that the necessary revision would be preferred within a period of four weeks from today. I am informed that the date before the trial Court is on 1.10.2005. In view of this statement, the trial Court shall not proceed with the trial on 1.10.2005 and for a period of three weeks thereafter.

7. On the necessary revision being preferred by the petitioners before the concerned Sessions Court, the concerned Sessions Court shall dispose of the same on merits after hearing necessary parties.

8. It is made clear that the revision shall be preferred against the order of the Magistrate issuing process and not against the order rejecting the application for recall of process.

9. Petition is disposed of.

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